

P 17513C02

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

Application 25580C02 Permit 17513C02

ORDER APPROVING CHANGE IN POINTS OF DIVERSION AND REDIVERSION,
PLACE OF USE, RE-DISTRIBUTION OF STORAGE,
APPROVING A NEW DEVELOPMENT SCHEDULE, AND
AMENDING THE PERMIT

WHEREAS:

1. Permit 17513C02 was issued to C. David Wailes on May 21, 1991 pursuant to Application 25580C02.
2. Permit 17513C02 was subsequently assigned to Edward and Camille Penhoet.
3. Petitions to change the place of use, points of diversion, points of rediversion, redistribute storage, and to extend the time within to complete the project have been filed with the State Water Resources Control Board (SWRCB) on March 18, 1994.
4. The SWRCB has determined that the petitioned changes do not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.
5. The permittee has proceeded with diligence and good cause has been shown for said changes and for the extension of time.
6. The permit term for the continuing authority of the SWRCB should be updated to conform to Section 780(a), Title 23 of the California Code of Regulations.
7. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A term should be placed in the permit making the permittee aware of possible obligations resulting from these acts.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition 2 of the permit be amended to read:
 1. Point of Diversion, Rediversion, and Offstream Storage:

South 1,500 feet and East 700 feet from the NW corner of projected Section 21,
T5N, R4W, MDB&M, being within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 21

(California Coordinate System, Zone 2, North 219,750 feet and East 1,909,800 feet);

2. Point of Diversion, Rediversion, and Offstream Storage:

South 1,500 feet and East 150 feet from the NW corner of projected Section 21, T5N, R4W, MDB&M, being within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 21 (California Coordinate System, Zone 2, North 219,750 feet and East 1,909,250 feet);

3. Point of Diversion to Offstream Storage:

North 2,200 feet and East 300 feet from the NE corner of projected Section 20, T5N, R4W, MDB&M, being within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 20 (California Coordinate System, Zone 2, North 219,150 feet and East 1,908,750 feet); and

4. Point of Rediversion and Offstream Storage:

South 2,600 feet and East 1,200 feet from the SW corner of projected Section 21, T5N, R4W, MDB&M, being within the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 20 (California Coordinate System, Zone 2, North 218,300 feet and East 1,909,950 feet)

(00000002)

2. Condition 4 of the permit be amended to read:

Irrigation and Frost Protection:

All within T5N, R4W, MDB&M.

1 acre, within the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 20;
5 acres, within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 20;
6 acres, within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 20;
1 acre, within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 21;
22 acres, within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 21;
21 acres, within the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 21; and
8 acres, within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 21,
64 acres total.

(00000004)

3. Condition 9 of the permit be amended to read:

Complete application of the water to the proposed use shall be made on or before December 31, 2010.

(0000009)

4. For an annual amount under Permit 17513C02 issue pursuant to Application 25580C02, the following condition shall be included:

The total quantity of water diverted under this permit, together with that diverted under permits issued pursuant to Application 25580B and Application 29262, shall not exceed 70 acre-feet per annum.

(0000114)

5. The water quality objectives condition, shall be updated to read as follows:

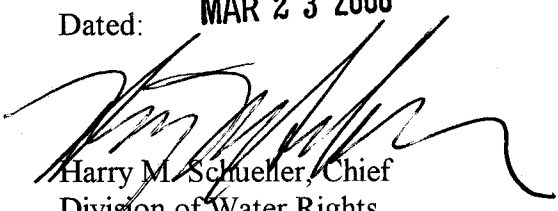
The quantity of water diverted under this license is subject to modification by the SWRCB if, after notice to the licensee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

6. The addition of condition to the permit that read as follows:

This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 5131 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

Dated: **MAR 23 2000**


Harry M. Schueller, Chief
Division of Water Rights

PERMIT FOR DIVERSION AND USE OF WATER

Application 25580C-2 of C. David Wailes and S. Adrienne Wailes

filed on November 29, 1977, has been approved by the State Water Resources
Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

1. Source:

Tributary to:

(1 - 3) Unnamed Stream

Napa River

County of Napa

3. Purpose of use:

4. Place of use:

The place of use is shown on map on file with the State Water Resources Control Board.

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1-27-93 paid to Internal Revenue Service;

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5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 10 acre-feet per annum to be collected from November 1 of each year to May 31 of the succeeding year. (0000005)

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. (000005I)

The maximum rate of diversion to offstream storage shall not exceed 3 cubic-feet per second. (000005J)

6. Complete application of the water to the authorized use shall be made by December 31, 1992. (0000009)
7. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until a license is issued. (0000010)
8. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)
9. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)

10. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)

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11. The State Water Resources Control Board reserves jurisdiction to impose conditions to conform this permit to Board policy on use of water for frost protection. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

(0000020)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: **MAY 21 1991**

STATE WATER RESOURCES CONTROL BOARD

[Signature]
Chief, Division of Water Rights